

1 CHARLES D. SAKAI (SBN 173726)
STEVEN P. SHAW (SBN 242593)
2 RENNE SLOAN HOLTZMAN SAKAI LLP
350 Sansome Street, Suite 300
3 San Francisco, CA 94104
Telephone: (415) 678-3800
4 Facsimile: (415) 678-3838

5 Attorneys for Defendants
6 CITY OF SAN JOSÉ and
CITY COUNCIL OF SAN JOSÉ

FILED
MAR 30 2016
DAVID H. YAMASAKI
Clerk Executive Council/Clerk
Superior Court of CA County of Santa Clara DEPUTY
A. Floresca

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SANTA CLARA
9

10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA ex rel. SAN JOSÉ POLICE
OFFICERS' ASSOCIATION,

12 Plaintiff,

13 v.

14 CITY OF SAN JOSÉ and CITY COUNCIL
15 OF SAN JOSÉ,

16 Defendants.

Case No.: 1-13-CV-245503

EXEMPT FROM FEES (GOV. CODE § 6103)

STIPULATED FACTS AND PROPOSED
FINDINGS, JUDGMENT AND ORDER

Complaint Filed: April 29, 2013

Trial Date: None Set

17 STIPULATION

18 These Stipulated Facts and Proposed Findings, Judgment and Order are entered into by and
19 between Plaintiff San José Police Officers' Association ("SJPOA"), on the one hand, and the City of San
20 José ("City"), on the other hand (collectively, the "Parties"), with respect to allegations and claims in
21 SJPOA's Verified Complaint in *Quo Warranto* ("Complaint"). The Parties have engaged in extensive
22 settlement negotiations and have reached agreement on the following stipulated facts and Order.
23

24 WHEREAS, the Parties recognize the overriding public interest in expedited resolution of these
25 quo warranto proceedings and implementation of the Settlement Framework approved by the San José
26 City Council on August 25, 2015 to restore and improve City services and sustainability of retirement
27 plans.
28

RENNE SLOAN HOLTZMAN SAKAI, LLP
Attorneys at Law

1 WHEREAS, the parties have reached this Stipulation in order to: (1) conserve resources; and (2)
2 address the costs, time, and risks of continued litigation, both in this forum and in others; and (3) resolve
3 between these parties the question of whether a decision in this matter would be universally applicable
4 with respect to the requirements of the ballot measure known as "Measure B," as applied to bargaining
5 units and employees outside of SJPOA should SJPOA's quo warranto proceedings succeed in
6 invalidating Measure B based on the bargaining history that took place between the City and SJPOA.

7 WHEREAS, the Parties make this agreement in the interest of identifying a collaborative
8 solution which addresses the financial challenges facing the City with respect to funding retirement
9 obligations, as well as a mutual desire on the part of employees, retirees and City to make such benefits
10 sustainable.

11 IT IS THEREFORE STIPULATED AND AGREED by and between the Parties to the above-
12 referenced action, through their respective attorneys of record, that the following be adopted as the
13 findings and Order of this Court.

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16 Stipulated Facts

17 1. On June 3, 2011, SJPOA and the City entered into a tentative agreement entitled "Side
18 Letter Agreement Between the City of San José and San José Police Officers' Association – Retirement
19 Reform."

20 2. On June 9, 2011, George Beattie, then-President of SJPOA, and Robert Sapien, then-
21 President of the International Association of Firefighters, Local 230 ("IAFF") wrote to Alex Gurza,
22 then-Director of Employee Relations for the City, requesting to commence joint bargaining over
23 retirement reform.

24 3. On June 20, 2011, the Parties entered into a Pledge of Cooperation and Agreement Upon
25 a Framework for Retirement Reform and Related Ballot Measure Negotiations ("Pledge and
26 Agreement"). The Pledge and Agreement essentially provided a set of ground rules for the Parties to
27 negotiate concurrently on the issues of retirement reform and related ballot measure(s). In addition to
28 SJPOA and the City, IAFF was a signatory to the Pledge and Agreement and negotiations occurred

1 between the City and both of those public safety Unions at the same table. A true and correct copy of
2 the Pledge and Agreement is attached hereto as **Exhibit 1**.

3 4. During the period spanning June 20, 2011 through October 28, 2011, SJPOA, IAFF and
4 the City met and conferred over retirement reform issues and/or related ballot measures on June 20, July
5 13, August 1, August 20, August 31, September 13, September 15, October 4, October 12, October 14,
6 October 20, October 24, and October 28, 2011.

7 5. SJPOA and IAFF issued a joint Retirement Reform Proposal on September 27, 2011.

8 6. During the period spanning June 20, 2011 through October 28, 2011, the CITY proposed
9 five (5) separate draft ballot measures to SJPOA and IAFF, which were provided on July 6, September
10 9, October 5, October 20, and October 27, 2011, respectively.

11 7. On October 31, 2011, having not reached an agreement on retirement reform and/or
12 related ballot measures, the Parties reached impasse pursuant to the terms of the Pledge and Agreement.

13 8. On November 11, 2011, SJPOA and IAFF issued a revised SJPOA/Fire Fighter
14 retirement reform proposal.

15 9. Pursuant to the terms of the Pledge and Agreement, which provided that the Parties
16 would proceed to impasse procedures if unable to reach agreement by October 31, 2011, SJPOA, IAFF
17 and the City participated in joint mediation sessions on November 15 and 16, 2011 before Mediator Paul
18 Roose of the California State Mediation and Conciliation Service.

19 10. At the conclusion of the November 15 and 16 mediation sessions, the Parties still had not
20 reached agreement on retirement reform and/or related ballot measures.

21 11. On November 18, 2011, SJPOA and IAFF issued new proposals significantly amending
22 their prior proposals. The Unions asked to resume bargaining based on their revised proposals.

23 12. Following SJPOA and IAFF's revised retirement reform proposal, the City issued a sixth
24 draft ballot measure proposal on November 22, 2011, which it provided to SJPOA and IAFF, informing
25 those bargaining units that the revised ballot measure would be presented to City Council for
26 consideration and possible adoption at the December 6, 2011 Council meeting. The November 22 ballot
27 measure made significant revisions from prior versions.
28

1 13. On December 1, 2011, SJPOA and IAFF sent the City another revised proposal and asked
2 to meet and confer about it.

3 14. On December 5, 2011, the City issued a seventh draft ballot measure, which was
4 presented to City Council for consideration and possible adoption at the December 6, 2011 Council
5 meeting. While the December 5 ballot measure was publically available before the December 6, 2011
6 City Council meeting, it was not provided to SJPOA and IAFF as part of the bargaining process. The
7 December 5 version of the ballot measure made additional concessions as compared to the November
8 22 version.

9 15. On December 6, 2011, the City Council adopted Resolution No. 76087, which approved
10 the City's last proposed ballot measure (i.e., December 5 version) for placement on the June 2012 ballot.

11 16. On December 13, 2011, SJPOA and IAFF wrote to the City asking to resume
12 negotiations or in the alternative engaging in further mediation.

13 17. Thereafter, SJPOA, IAFF and the City participated in a second joint mediation, before
14 mediator Douglas Collins, on January 17, January 18, February 6, and February 10, 2012, in an effort to
15 reach agreement on retirement reform and/or related ballot measures prior to the proposed ballot
16 measure previously adopted by the City Council being placed before the voters.

17 18. At the conclusion of the January 18 through February 10 mediation sessions, the Parties
18 still had not reached agreement on retirement reform and/or related ballot measures.

19 19. On February 21, 2012, the City proposed an eighth draft ballot measure to SJPOA and
20 IAFF, and informed those bargaining units that the revised ballot measure would be presented to the
21 City Council for consideration and possible adoption at the Council meeting scheduled for March 6,
22 2012. If approved, the revised ballot measure would replace the version previously adopted by the City
23 Council on December 6, 2012.

24 20. On February 24, 2012, the SJPOA requested to bargain about the February 21, 2012
25 ballot measure. The City responded to the SJPOA's letter on February 27, 2012, but the City and Unions
26 did not engage in further negotiations.
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1 21. On March 3, 2012, SJPOA and IAFF issued a further revised SJPOA/Fire Fighter
2 retirement reform proposal.

3 22. On March 5, 2012, the City responded to SJPOA and IAFF's March 3 proposal via letter,
4 but the parties did not engage in further negotiations.

5 23. On March 6, 2012, the San José City Council adopted Resolution No. 76158, which
6 repealed Resolution No. 76087, and instead approved the February 21, 2012 proposed ballot measure for
7 placement on the June 5, 2012 ballot.

8 24. On June 5, 2012, that ballot measure, which had become known as Measure B, was
9 passed by the voters.
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11 Stipulated Findings

12 1. The California Supreme Court has held that a charter city (such as the City of San José)
13 must comply with the meet and confer requirements of the Meyers-Milias-Brown Act ("MMBA") –
14 which govern relations between local public agency employers and local public employee organizations
15 – before placing an initiative measure on the ballot that would affect matters within the scope of the Act.
16

17 2. It is clear from the Parties' submissions and recitations of the relevant facts that the
18 Parties did, in fact, meet and exchange proposals over a period of several months, reaching an agreed-
19 upon impasse on October 31, 2011.

20 3. The MMBA's "duty to bargain requires the public agency to refrain from making
21 unilateral changes in employees' wages and working conditions until the employer and employee
22 association have bargained to impasse " If an impasse exists, however, it may be broken, and the
23 duty to bargain revived, by a change in circumstances that suggests that bargaining may no longer be
24 futile.

25 4. In this case, the issue is whether impasse existed and, if it did, whether it had been broken
26 by post-impasse ballot changes made by the City and whether the City Council should have negotiated
27 further with SJPOA prior to placing the matter before the voters.
28

1 Stipulated Conclusions

2 1. Here, both Parties met and conferred in good faith before reaching an agreed-upon
3 impasse on October 31, 2011.

4 2. However, continued modification of the proposed ballot language after impasse –
5 including concessions made by the City – created a further obligation to meet and confer before placing
6 Measure B on the ballot.

7 3. The City’s failure to do so is deemed to be a procedural defect significant enough to
8 declare null and void Resolution 76158, which placed Measure B on ballot.
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13 ~~Proposed~~ Stipulated Judgment and Order

14 In light of the Stipulated Facts, Findings and Conclusions set forth above, and pursuant to the
15 Parties’ desire to settle and resolve the disputes between them through the terms of this Stipulation, the
16 Parties respectfully submit the attached Proposed Stipulated Judgment and Order (Exhibit A), which is
17 incorporated herein.
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1 Dated: March 2, 2016

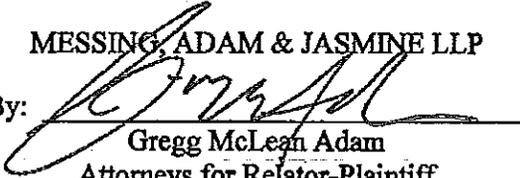
RENNE SLOAN HOLTZMAN SAKAI LLP

2
3 By: 

4 Charles D. Sakai
5 Steven P. Shaw
6 Attorneys for Defendants
7 CITY OF SAN JOSÉ and
8 CITY COUNCIL OF SAN JOSÉ

9 Dated: March 2, 2016

MESSING, ADAM & JASMINE LLP

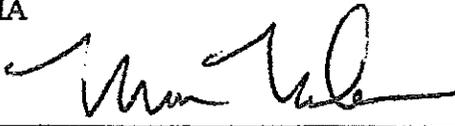
10 By: 

11 Gregg McLean Adam
12 Attorneys for Relator-Plaintiff
13 SAN JOSE POLICE OFFICERS' ASSOCIATION

14 APPROVED AS TO FORM:

15 Dated: March 2, 2016

ATTORNEY GENERAL FOR THE STATE OF CALIFORNIA

16 By: 

17 Marc J. Nolan
18 Deputy Attorney General

RENNE SLOAN HOLTZMAN SAKAI LLP
Attorneys at Law

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